

DARRELL PALMER, ET. AL.

IBLA 2001-72, 2001-85

Decided May 28, 2002

Appeals from decisions of the Idaho State Office, Bureau of Land Management, declaring mining claims forfeited for failure to pay maintenance fees or file waiver certifications. IMC 100093, 143195-202, 18408-410, 18412, 125548, 164235 and 18407.

Affirmed in part (IMC 18407) and reversed in part (IMC 100093, 143195-202, 18408-410, 18412, 125548, 164235).

1. Evidence: Presumptions--Evidence: Sufficiency--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A BLM finding that a document was not timely filed resulting from the absence of the document from the files coupled with the presumption that BLM officials have not misplaced legally significant documents filed with them may be rebutted by evidence on appeal that the documents were tendered and received by BLM timely and inadvertently returned without date stamping and retention in the files.

2. Administrative Procedure: Stays--Rules of Practice and Procedure: Appeals: Stay--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

When a BLM decision finding a mining claim forfeited and void is stayed pending administrative review, claimant is responsible for maintaining the claim in good standing pending a decision on appeal. A subsequent BLM decision finding the claim forfeited may be affirmed when claimant failed to pay the required maintenance fee or file a waiver certification during the pendency of the appeal.

APPEARANCES: Patricia Holmberg and Darrell Palmer, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Darrell Palmer has appealed an October 27, 2000, decision of the Idaho State Office, Bureau of Land Management (BLM) declaring his Syzygy (IMC 100093) and Equinox #1-8 (IMC 143195-202) mining claims forfeited by operation of law for failure to pay maintenance fees or file waiver certifications on or before September 1, 2000, for the 2001 assessment year as required by statute. Darrell Palmer's appeal has been docketed as IBLA 2001-72.

Patricia Holmberg has filed an appeal (IBLA 2001-85) of two BLM decisions dated October 27, 2000. The first declared six of her mining claims, the Million Dollar #1-#3 (IMC 18408-410), Million Dollar #5 (IMC 18412), Colonel Maude (IMC 125548), and Clara B #1 (IMC 164235), forfeited by operation of law for failure to pay maintenance fees or file a waiver certification on or before September 1, 2000. Because Holmberg's appeal of this decision involves common factual and legal issues with the Palmer appeal, we hereby consolidate the cases for purposes of administrative review by this Board.

In this same case, Holmberg has also appealed a second BLM decision declaring the Pat Brennan #1 mining claim (IMC 18407) forfeited and void for failure to pay the maintenance fee or file a waiver certification on or before September 1, 2000. This latter decision involves a different issue and will be addressed separately in this opinion.

Appellants in their respective statements of reasons (SOR's), regarding Palmer's nine claims and Holmberg's six claims, assert that under the circumstances BLM is properly estopped to deny their waiver certifications for these claims were timely filed because they were, in fact, timely filed by Holmberg. Specifically, Holmberg states that:

[O]n August 30, 2000, I personally hand-delivered the documents required, including the waivers and the [proof of] assessment work, to the clerk behind the counter at the Idaho State Office of the BLM. These documents were in a manila folder, which I opened, and gave to the clerk, stating that they needed to be filed, and fees paid.

(SOR at 3.) Holmberg states further:

During the process, the Supervisor-Land Law Examiners, Diane Hartman, and I engaged in conversation and even joked about the fact that not only did I have my waivers in there, but I also had my assessment work to file before December. At one point, the clerk interrupted Diane Hartman's and [my] conversation to ask if I needed one receipt or two, since I was filing for someone else [Darrell Palmer]. I was shown the two receipts and given an amount to pay. The file folder was closed after

the receipts had been placed inside and it was handed back over the counter to me, indicating that all transactions were complete. I left the building in good faith, believing that everything was done as usual.

Id. BLM has not responded to appellants' arguments on appeal.

The Omnibus Budget Reconciliation Act of 1993, as amended, 30 U.S.C. § 28f(a) (Supp. IV 1998), provides the "holder of each unpatented mining claim, mill or tunnel site, located pursuant to the mining laws of the United States * * * shall pay to the Secretary of the Interior, on or before September 1 of each year for years 1999 through 2001, a claim maintenance fee of \$100 per claim or site." Pursuant to 30 U.S.C. § 28f(d), a small miner (a claimant which, together with all related parties, holds no more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands) may file, in lieu of the maintenance fee, a waiver certification on or before September 1 of each year and perform the assessment work and file the affidavit of labor evidencing performance of annual assessment work required by the Mining Law of 1872 on or before December 30. 43 CFR 3833.1-5(d), 3833.1-6, 43 CFR 3833.1-7 and 43 CFR 3833.2.

The statute provides further that failure to pay the claim maintenance fees as required "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (Supp. IV 1998). The failure of a qualifying small miner to file a waiver certification by the September 1 deadline also causes the claim to be deemed null and void by operation of law if the maintenance fee is not paid. 43 CFR 3833.4(a)(2); Alamo Ranch Co. Inc., 135 IBLA 61 (1996).

[1] There is a legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them and, hence, the absence of timely date-stamped documents from the record will support a finding that the documents were not timely filed. This presumption may, however, be rebutted by probative evidence to the contrary. John and Linda Nelson, 156 IBLA 195, 199 (2002); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This means that the burden of proof is shifted to the appellant to provide evidence that a filing was timely made and thereby rebut the presumption of administrative regularity.

In evaluating evidence of timely filing, the Department has generally distinguished evidence of placing a document in the mail from evidence of tender and receipt by BLM of a document. Until the proper office has had the opportunity to receive or decline the document, no tender has occurred. Jerald A. Waters, 94 IBLA 150, 152 (1986); William E. Phalen, 85 IBLA 151, 153 (1985). Thus, a statement that a document was enclosed in the same envelope together with other documents that were received by BLM must be

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corroborated by other evidence to establish filing where there is no evidence of receipt of the document in the file. R. E. Frasch, 69 IBLA 66, 69 (1982).

We find that the present case is most akin to L. E. Garrison, 52 IBLA 131 (1981). In that case, BLM declared the appellant's mining claim abandoned and void for failure to file evidence of assessment work or a notice of intention to hold the claim for calendar year 1979, on or before October 22, 1979. 1/ The appellant alleged that he had prepared an affidavit of assessment work, filed a copy with the county, and placed it in an envelope with a copy of his location notice, a map, and the requisite filing fee, which he mailed to BLM. The appellant submitted on appeal

the affidavit of his wife in which she stated that she called BLM on October 19, 1979, to inquire whether BLM had received the documents. She indicated that she talked to a BLM employee who had appellant's letter on his desk and who opened it while talking to her and confirmed that all of the necessary documents were in order and received. A copy of the appellant's telephone bill documenting the call to BLM was attached. The Board held that the appellant had overcome the presumption of regularity with probative evidence. We stated at page 132: "While we admit that there may still be room for doubt as to whether the proof of annual labor was filed, we hold that a preponderance of the evidence before us supports a finding that all required documents were, indeed, timely filed."

In this case, the evidence shows that Holmberg arrived at the BLM office on August 30, 2000, the day before the deadline for filing maintenance fees and waiver certifications. She alleges that the waivers were included in the folder, which she opened and presented to BLM. She paid the maintenance fee for one of her claims and the service charges for the annual assessment work filings. The record shows that she was well-known in the BLM office and experienced with mining claim filing deadlines. 2/ In such circumstances, it would be reasonable to assume that, on the day before the deadline for filing, BLM would have informed her if she had not included in her folder a waiver certification for her other claims. In addition, given that she was filing an affidavit of assessment work for Palmer's claims, the same could be said regarding those claims. There is no evidence that BLM did so.

1/ The owner of an unpatented mining claim located prior to Oct. 21, 1976, was required to file with the proper BLM office by Oct. 22, 1979, and on or before Dec. 30 of each calendar year thereafter, evidence of annual assessment work or a notice of intention to hold the claim. 43 U.S.C. § 1744(a) (1994); 43 CFR 3833.2-1(a).

2/ The case record contains a copy of an Oct. 5, 2000, "Note to Files" from a BLM land law examiner stating that, while processing a receipt for Holmberg's filings and reviewing related case files, she was unable to

Under the circumstances, we find that, while it is possible that Holmberg did not include the waiver certifications in the folder, it is more likely than not that she tendered the waiver certifications for the claims to BLM but that BLM inadvertently returned them to her without date stamping or recording them. We conclude that appellants have overcome the presumption of regularity. The decisions declaring the claims null and void are reversed.

Appellant Patricia Holmberg has also appealed the BLM decision finding the Pat Brennan #1 mining claim (IMC 18407) forfeited for failure to pay the maintenance fee or file a waiver certification on or before the September 1, 2000, deadline. It appears from the record that prior to this time BLM had issued a decision declaring this claim forfeited because of the failure of Ms. Holmberg to either establish her qualification for a waiver certification or pay a maintenance fee for this claim by August 31, 1998. By Order dated June 24, 1999, the Board granted appellant's petition to stay the effect of the BLM decision pending administrative review of the merits of the appeal. Subsequently, the Board issued an Order dated September 22, 2000, reversing the BLM decision which had declared the claim forfeited on the ground the waiver certification filed August 31, 1998, was invalid.

In the BLM decision of October 27, 2000, declaring the Pat Brennan #1 claim forfeited, BLM held that the stay of the prior BLM decision issued by the Board in June 1999 had the effect of suspending the prior BLM decision holding the claim forfeited. Consequently, BLM reasoned that the claim was in good standing pending resolution of the prior appeal and appellant was required to file either a maintenance fee or a waiver certification by the September 1, 2000, deadline to continue to maintain the claim.

Appellant does not assert that either a maintenance fee was paid or a waiver certification filed with BLM by the September 1, 2000, deadline for the Pat Brennan #1 claim. Rather, appellant asserts that she was awaiting a decision from the Board which was subsequently issued on September 22, 2000. In her SOR for appeal, appellant generally argues that the statutory enactment of the maintenance fee/waiver provisions violates the Mining Law of 1872; that because BLM and this Board are not courts established pursuant to Article III of the Constitution they have no jurisdiction to adjudicate the status of appellant's mining claim; and the Department has no authority to promulgate or apply regulations in this matter.

As a threshold matter, we note that appellant is correct that neither BLM nor this Board constitutes a part of the Federal judiciary established

fn.2 (continued)

locate a waiver for Holmberg's claims. She stated: "I decided to call Ms. Holmberg at home. I made this call because based on the many years that Ms. Holmberg has been filing documents for mining claims, it seemed unusual that she would have missed the 9/1/00 filing deadline for her waiver."

by Article III of the United States Constitution. Rather, the Department of the Interior is part of the Executive Branch of the Government established by Article II of the Constitution. The Congress has generally conferred the authority for management of the public lands and their resources upon the Secretary of the Interior. It is well established that the Secretary of the Interior has broad plenary powers over the disposition of public lands. Ideal Basic Industries v. Morton, 542 F.2d 1364, 1367 (9th Cir. 1976) (citing Cameron v. United States, 252 U.S. 450, 459-64 (1920); Knight v. United States Land Association, 142 U.S. 161, 177 (1891)). The Board of Land Appeals, operating under a delegation of authority from the Secretary of the Interior, exercises the quasi-judicial responsibility of deciding appeals from adjudicatory decisions of BLM regarding use of the public lands and their resources. 43 CFR 4.1. Accordingly, this Board has jurisdiction over this appeal from the BLM decision adjudicating the status of appellant's mining claim. 3/

[2] Review of the BLM decision with respect to the Pat Brennan #1 claim requires analysis of the impact of a stay issued by the Board on appeal. The regulations governing appeals of BLM decisions provide that when an appeal is filed and no stay of the effect of the decision is requested the decision becomes effective at the close of the appeal period or, if a stay is requested and no stay is granted, the decision becomes effective 45 days after the close of the appeal period. 43 CFR 4.21(a). Consequently, the Board has held that the mining claim ceases to exist pending administrative review of the propriety of the BLM decision and, hence, claimant has neither an obligation nor the option to file either maintenance fees or a waiver certification with respect to the claim pending a decision on appeal. Sigma M Explorations, Inc., 145 IBLA 182, 189 (1998); Lenore L. Baird, 142 IBLA 335, 336 (1998). When, on the other hand, a decision is stayed pending issuance of a decision on appeal, as a general rule, failure to maintain mining claims in conformity with the law during the pendency of an appeal of a decision which ruled on the validity of such claims renders the appeal moot. United States v. Stone, 136 IBLA 22, 25 (1996); United States v. Mineco, 130 IBLA 314, 318 (1994); United States v. Ballas, 87 IBLA 88, 92 (1985). In the case of the Pat Brennan #1 claim (IMC 18407), claimant sought and was granted a stay pending administrative review of the previous BLM decision. In these circumstances, claimant was obligated to keep the claim in good standing, including filing of the appropriate maintenance fee or waiver certification and affidavit of assessment work.

3/ With respect to asserted inconsistencies with the Mining Law of 1872, the fundamental answer is that the Mining Law of 1872 has been amended by enactment of the statutory provisions regarding mining claim maintenance fees and waiver certifications.

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as to the Pat Brennan #1 claim (IMC 18407) and reversed as to the remaining claims.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

